IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.1.2002

C O R A M :

THE HONOURABLE MR.JUSTICE R.JAYASIMHA BABU
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

W.P.NO.14697 OF 2001 and W.M.P.No.21823 of 2001 and W.P.No. 31898 of 2001

1.N.Selvaraj D-A 1/3,
Police Quarters,
Gorimedu,
Pondicherry-6.

2.S.Sushya
No.6, Manikandan Illam,
Manickavasagam Street,
Raja Annamalai Nagar,
Pondicherry-6.

3.S.Srinivasan,
G-III, D-Nagar,
JIPMER Campus,
Pondicherry-6.

4.D.Manimehalai,
G-23,
Dhanvantri Nagar,
JIPMER Campus,
Pondicherry-6.

5.A.Vijaya,
47,Thillai Natar Street,
Kurusukkuppam,
Pondicherry-6.

6.M.Ganessin,
493, Baharatidasan Street,
Ashok Nagar,
Pondicherry-605 008. .. Petitioners

-vs-

1.The Union of India,
rep. by the Director,
JIPMER,

Pondicherry-6.

2.P.Kannadasan,
No.30, Ingari Maistry Street,
Pondicherry-1.

3.The Central Administrative Tribunal,
Madras Bench,
rep. by its Registrar,
Madras-104. .. Respondents

For petitioners : : Mr.N.G.R.Prasad

For respondents : : Mr.M.T.Arunan,
A.C.G.S.C. For R1
A.C.G.S.C. For R1

Mr.M.Gnanasekar for R2
Mr.M.Gnanasekar for R2

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: O R D E R

(ORDER OF THE COURT WAS MADE BY R.JAYASIMHA BABU, J.)

The order challenged is that of the Tribunal which has quashed the appointments made to the post of Lab Technician in JIPMER on the ground that the advertisement had not been effected for that post and that the selection had been made only from among those sponsored by the Employment Exchange.

2. The applicant before the Tribunal had registered himself with the Employment Exchange but his name was not sponsored, although, the names of 87 others had been sponsored. However, after sponsoring the names, the Employment Exchange had issued an advertisement in the newspaper, in which it was inter alia made known that the posts of Lab Technician were available in the JIPMER, for which the Exchange had sponsored candidates coming from different categories, such as, Scheduled Castes and Scheduled Tribes. That advertisement sets out the qualifications for the post as also the pay scale.

3. The applicant before the Tribunal, who had earlier been employed in a temporary post in the same institution to perform the same work for which regular recruitment was being made through the Exchange, applied to the Tribunal before the selection process was complete, but the Tribunal having taken the view that it was premature, that application was withdrawn with liberty to file a fresh application after the selection. Subsequently, the application from which this petition has arisen came to be filed. By the time the application came to be considered on merits, the selection process had been completed and six persons had been selected from among the 87 persons who had been sponsored by the Exchange. The Tribunal set aside their selection on the ground that sufficient publicity had not been given to the availability of these vacancies. The intimation given to the Exchange in the view of the Tribunal by itself not being sufficient. The Tribunal relied upon the decision of the Supreme Court in EXCISE SUPERINTENDENT -VS- K.B.N.VISWESHWARA RAO AND OTHERS (1996) 6 S.C.C. 216) wherein it was observed in para 6 thus:"6. Having regard to the respective contentions, we are of the view that contention of the respondents is more acceptable which would be consistent with the principles of fair play, justice and equal opportunity. It is common knowledge that many a candidate is unable to have the names sponsored, though their names are either registered or are waiting to be registered in the employment exchange, with the result that the choice of selection is restricted to only such of the candidates whose names come to be sponsored by the employment exchange. Under these circumstances, many a deserving candidate is deprived of the right to be considered for appointment to a post under the State. Better view appears to be that it should be mandatory for the requisitioning authority/establishment to intimate the employment exchange, and employment exchange should sponsor the names of the candidates to the requisitioning departments for selection strictly according to seniority and reservation, as per requisition. In addition, the appropriate department or undertaking or establishment should call for the names by publication in the newspapers having wider circulation and also display on their office notice boards or announce on radio, television and employment news bulletins; and then consider the cases of all the candidates who have applied. If this procedure is adopted, fair play would be subserved. The equality of opportunity in the matter of employment would be available to all eligible candidates". The Tribunal in the course of its order did not consider the advertisement which the Exchange had issued.

4. It is submitted by Mr.Prasad, learned counsel appearing for the petitioners that the Tribunal fell into an error in holding that there was insufficient publicity given to the vacancy, and also that the law laid down by the Supreme Court in the earlier and subsequent decisions have upheld the selections and appointments made on the basis of intimations

given to the Employment Exchanges and after considering the names sponsored by such Exchanges. The learned counsel, in this context, referred as to the decision of the Apex Court in the case of UNION OF INDIA AND OTHERS -vs- N.HARGOPAL AND OTHERS (1987) 3 SCC 308), wherein it was observed that "the submission that Employment Exchanges do not reach everywhere applies equally to whatever method of advertising vacancies is adopted. In the absence of a better method of recruitment, we think that any restriction that employment in Government Departments should be through the medium of Employment Exchanges does not offend Articles 14 and 16 of the Constitution".

5. Learned counsel also referred us to the decision of a three Judge Bench of the Apex Court in the case of STATE OF HARYANA AND OTHERS -VSPIARA SINGH AND OTHERS (1992) 4 SCC 118), more particularly, the observation of the Court at paragraph 47 of the judgment, which observation was made in the context of the issue concerning regularisation of ad hoc/temporary employees in the Government service: "Thirdly, even where an ad hoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the Employment Exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the Employment Exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly".

6. Our attention was also invited to certain observations made in the case of ARUN TEWARI and OTHERS -vs- ZILA MANSAVI SHIKSHAK SANGH AND OTHERS (1998) 2 SCC 332) wherein the Court made the following observations at paragraph 20 of the judgment:"...But in the subsequent and more recent case of EXCISE SUPERINTENDENT -VS- K.B.N.VISWESHWARA RAO, this Court has distinguished UNION OF INDIA -vs- HARGOPAL on the basis of special facts of that case. It has observed that the better course for the State would be to invite applications from Employment Exchanges as well as to advertise and also give wide publicity through Television, Radio etc. The court had to consider whether persons who had applied directly and not through Employment Exchange should be considered. This Court upheld their claim for consideration". At para 21 of the judgment, the Court observed thus :"There are different methods of inviting applications. The method adopted in the exigencies of the situation in the present case cannot be labelled as unfair, particularly when, at the relevant time, the two earlier decisions of this Court were in vogue."

7. The learned counsel for the respondents invited our attention to the case of KISHORE K.PATI -vs- DISTRICT INSPECTOR OF SCHOOLS, MIDNAPORE AND OTHERS (2000) 9 SCC 405), wherein the Court upheld the selection of candidates who had not been sponsored by the Employment Exchange. In that case, those who had not applied through the Exchange had been permitted to appear at the interview pursuant to a direction issued by the High Court, which direction was not challenged and had become final.

8. In matters of recruitment, what is important is that the persons who possess the qualifications required for the post are made aware of the availability of the vacancy, so that all of them can offer themselves for consideration. The manner of making known the vacancies, in the case of employment under the State, has been primarily through the network of Employment Exchanges. The Courts have in the past not only upheld selections made through such exchanges but had also struck down selections made without reference to the Exchange. In later periods, the Courts have been upholding the selection of persons not sponsored by the Exchange but had applied on their own, or in response to an advertisement, or after obtaining directions from Courts or Tribunals. The State itself has also adopted the mode of advertisement for many posts, advertisement for senior positions being the common feature when recruitment is made through the Public Service Commissions at the Union and State levels. The mode adopted for inviting applications has not been uniform. The method would depend upon the exigencies of the situation as observed by the Apex Court in the case of ARUN TEWARI and OTHERS -vs- ZILA MANSAVI SHIKSHAK SANGH AND OTHERS (1 998) 2 SCC 332).

9. The observations made by the Supreme Court in the case of EXCISE SUPERINTENDENT -VS- K.B.N.VISWESHWARA RAO, which incidentally refers only to the case of UNION OF INDIA -vs- HARGOPAL and no other, was made in the background of these varying practices. What was emphasised by the Court therein was the need for fair play, justice and equal opportunity. Intimation being given to the Employment Exchange and consideration of names sponsored by the Exchange was held to be mandatory. The additional modes of making the existence of vacancies known to prospective candidates, viz., by publication in the newspapers with wide circulation, the display on the office notice boards and as an alternative to that announcements over the radio, television and Employment News Bulletin were also to be utilised by the Employer.

10. The Respondent employer has placed before us the letter dated 15 .10.2001 from the Employment Officer of the Employment Exchange, Pondicherry wherein it is stated thus:"I am to invite your kind attention to the letters cited on the subject mentioned above and to inform that the details of candidates

sponsored against the vacancies notified by the Employers are being published in leading dailies, broadcast in the radio and also displayed in the notice board once in a week. Likewise, the details of candidates sponsored for the recruitment to the post of Laboratory Technician were also published in Dina Malar on 22.10.2000 and the same have also been broadcast in the radio and displayed in the notice board of this Exchange".

11. It is evident from that letter that though the employer had merely intimated the exchange about the availability of the vacancies and had not itself proceeded to advertise in the newspapers or announce on the radio, television and Employment News bulletins, the Employment Exchange had advertised the vacancy indirectly in the newspapers, the contents of which have already been referred to. It had also been displayed on the notice board of the exchange and had been broadcast on the radio.

12. The learned counsel for the JIPMER has placed before us the record pertaining to the recruitment which shows that the employer had carefully considered the qualifications and the suitability of all those sponsored by the exchange, which must have occupied considerable time and effort. The six persons to whom employment was ultimately offered all of whom possess all the qualifications prescribed, have thus been chosen after intimation to the exchange which is mandatory, and after publicity given to the vacancies in the newspaper by the Exchange, the publication of the same on the notice board of the exchange, as also announcement regarding the same on the radio.

13. The applicant before the Tribunal did not apply to the employer in time but chose to apply only on 4.1.2001, i.e six days before the interview, and two months after the Employment Exchange submitted the list of candidates, whose cases had then been processed by the employer. The employer at that time felt that it was not possible to consider such a belated application. Under these circumstances, we do not consider it just to set aside the selection made only on the ground that an application made six days before the interview and long after the advertisement effected by the exchange in the newspapers had not been considered.

14. We must also record what was submitted before us by the counsel for the Central Government. He informs us that the institution JIPMER has received 12,000 applications for 31 vacancies in Group 'D'. Learned counsel stated that that number

of applications were received pursuant to advertisements issued in newspapers throughout India at considerable expense. It is therefore very necessary that practical methods be evolved to balance the requirements of equal opportunity and fairness, with the need for filling up vacancies expeditiously and without having to incur huge expenditure on advertisement, so that administrative efficiency is not impaired.

15. Having regard to the facts and circumstances of the case, the Tribunal, in our view, was not justified in setting aside the selection that had been made. We, therefore, set aside the order of the Tribunal.

16. The applicant before the Tribunal had earlier been employed in a temporary position with the first respondent. We are informed by the learned counsel that even now there is one vacancy in the post of Lab Assistant. The applicant, who is the second respondent herein, shall be considered for that vacancy along with others who may apply for the same as and when that vacancy is notified/advertised.

17. The writ petition is allowed. Consequently, the connected W.M. Ps. are closed. No costs.

(R.J.B.,J.) (F.M.I.K.,J.)
Index:yes/no 28.01.2002 JS

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AND
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